IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN.APPLICATION NO.47 OF 2002

Sou.Jamila Taisoom Shaikh ... Applicant

versus

Taisoom Chand Shaikh & anr. ... Respondents

...

Ms.S.S. Bhole for Mr. S.G. Deshmukh, for the Applicant.

Mr.U.B. Nighot for the Respondent.

Mr.K.V. Saste, A.P.P., for the Respondent State.

...

CORAM : A.M.KHANWILKAR,J.

28th March 2005

P.C.:

. Heard Counsel for the parties. The only question that arises for consideration in the present petition is whether the amount of Rs.150/- per month determined by the lower Court to be paid as monthly allowance to the Petitioner in exercise of powers under section 125 of the Cr.P.C. can be said to be appropriate.

According to the Petitioner wife, the Court below ought to have granted maintenance upto Rs.500/- per month as was claimed in the original application. It is submitted that the Petitioner has not only to look after herself, but also a minor daughter born out of the wedlock between the parties. The Court below has, however, awarded only sum of Rs.150/- per month to be paid to the Petitioner wife from the date of the order dated 20th November 2001.

. The Court below has considered the relevant aspects in para 8 of the order to hold that the income of the Respondent can at best be Rs.750/- per month. On that basis, the Court directed the Respondent husband to pay monthly allowance of Rs.150/- per month to the Petitioner wife. The conclusion so reached by the lower Court is on the basis that the Petitioner wife did not adduce evidence to indicate that the Respondent husband was dealing in cycles as claimed by her or had higher income than the one assumed by the lower Court. That finding cannot be disturbed in exercise of revisional jurisdiction.

. Insofar as the grievance of the Petitioner that the Petitioner has not only to look after herself, but also minor daughter born out of the said wedlock, that aspect was agitated by the Petitioner by way of application filed on 11th June 1999. However, it appears that no adjudication has been done with regard to the relief claimed in the said application dated 11th June 1999. In other words, the claim for maintenance of minor daughter born out of the wedlock between the Petitioner and the Respondent has not been answered by the lower Court. In this backdrop, the appropriate course is to keep that issue open so that the Petitioner can agitate that aspect afresh before the lower Court. In that proceedings, it will be open to the Petitioner to adduce evidence to establish the fact that the income of the Respondent husband is much more than Rs.750/- per month.

. Accordingly, this petition is disposed of leaving the question of maintenance amount to be paid to the minor daughter open, as also for applying for enhancement of maintenance amount

for the Petitioner, as may be permissible by law.

(A.M.KHANWILKAR,J.)